

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11141 OF 2016

Anoop Lalitmohan Jaju

..PETITIONER

VERSUS

The Maharashtra State Election Commissioner
and Others

..RESPONDENTS

....

Mr. N.V. Gaware, Advocate for petitioner.

Mr. S.T. Shelke, Advocate for Respondent Nos.1 and 2.

....

CORAM : T.V. NALAWADE, J.

DATED : 16th NOVEMBER, 2016

ORDER :

1. The petition is filed to challenge the order of Returning Officer by which the nomination form of Respondent No.4 – Jaykumar Lodha is accepted and proceeding is filed also to challenge the decision given by the District Court, Ambajogai in Election Appeal No. 4 of 2016. Both sides are heard.

2. The petitioner and Respondent No.4 had filled nomination forms for election to the Municipal Council, Ambajogai. Both belong to political party - Nationalist Congress Party (N.C.P.) Necessary forms i.e.

AB Forms were supplied to show that Respondent No.4 – Jaykumar was the party candidate and in case of rejection of his nomination form, alternate candidate was Anoop Jaju. During the scrutiny, the petitioner took objection to the nomination form of Jaykumar by contending that he was defaulter and even after making demand of house tax and other dues by the local body, the dues were not cleared by him and so he was not eligible to contest the election. In rebuttal, a certificate issued by the local body was produced for Jaykumar which was to the effect that there were no dues of the local body as against Jaykumar. In view of this certificate, the Returning Officer rejected the objection filed by present petitioner.

3. The nomination form of Jaykumar was accepted and then the nomination form of Jaju – present petitioner was rejected. As the petitioner had filed nomination form as party candidate, there was only one proposer on his nomination form and in view of the rules, he could not have been treated as independent candidate also and so his nomination form came to be rejected. Present petitioner challenged the order of acceptance of nomination form of Jaykumar by filing Election Appeal No. 4 of 2016. It appears that after scrutiny, Respondent No.4 withdraw his nomination and he supported Congress (I) candidate for the election from the said ward. This circumstance was also informed to the

District Court. The District Court dismissed the appeal by holding that Jaykumar was party candidate and when his nomination was accepted during scrutiny, there was no other alternative than to reject the nomination form of present petitioner. The District Court held that it was necessary to file appeal against the order of rejection of nomination form of petitioner and as that was not done, the alternate relief in view of change in circumstances cannot be given to him.

4. On the aforesaid point, order issued by Election Commission dated 25th February, 2013 is produced. The provision of Rule 13 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Election Rules, 1966 shows that for the independent candidate, there need to be five proposers but for party candidate, one proposer is sufficient. Further, the order made with regard to these rules which amended the rules shows that Annexure – I and II are required to be filed by party before the Returning Officer and other authorities before the expiry of time fixed for filing of nomination. It was submitted by learned Counsel for Returning Officer that in view of these amendments as soon as the nomination paper of the party candidate is accepted, the nomination form of the substitute candidate – dummy candidate needs to be rejected as there can be only one party candidate. This Court is

avoiding to give finding on this proposition as the purpose behind the order dated 25th February, 2015 does not appear to be as per the proposition made by learned Counsel. This point is not required to be decided in the present matter as the order of rejection of nomination form of present petitioner was not challenged by filing appeal by present petitioner.

5. The point which needs to be decided in the present matter is only the eligibility of Respondent No.4 – Jaykumar to contest the election. There was allegation that he had not paid the lease amount and house tax and notice was issued to him prior to the date of nomination. The record is produced to show that a certificate was issued by local body that some candidates had paid only 30% of the amount due. There is tax payment receipt dated 28th October, 2016 showing that amount of Rs.6,548/- was paid by Jaykumar as house tax and it was for the period 2013 to March, 2017. Similarly, there was certificate of no dues issued by Nagar Parishad, Ambajogai dated 28th October, 2016 showing that there were no dues against Jaykumar. In view of this circumstance and as nomination form was filled on 28th October, 2016, there was no other alternative before the Returning Officer than to reject the objection taken by present petitioner. More detailed enquiry is not possible at this stage. In view of

this circumstance, this Court holds that the Returning Officer did not commit any error and similarly the District Judge has not committed any error.

6. Learned Counsel for petitioner places reliance on the case reported as *AIR 2000 SC 317 (Krishna Mohini Vs. Mohinder Nath Sofat)*. In this case the Apex Court has discussed the provisions of Sections 33, 36 and 100 of Representation of People Act, 1951 and while interpreting Section 33, the Apex Court has laid down that a candidate who is merely substitute or a cover candidate set up by a recognised political party, may file his nomination paper proposed by only one elector of the Constituency. Learned Counsel for petitioner submitted that the provisions made in the Rules in this regard for the present election are same and so nomination form of present petitioner could not have been rejected. This Court has already observed that there is no necessity of deciding this point as rejection of nomination form of present petitioner was not challenged. In the same case, in view of provision of Section 33 of the said Act, the Apex Court had observed that if the nomination paper of the approved candidate of that political party is accepted, the nomination paper filed by substitute or cover candidate shall be liable to be rejected because there can be only one candidate set

up by a recognised political party. Whether this is proposition of the Apex Court can be applied in the present matter is a different point in view of the Order of 2009 issued by State Election Commission. There is no necessity of deciding this point in the present matter and so the petition stands dismissed.

(T.V. NALAWADE, J.)

SSD